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No. 99-1070

In the Supreme Court of the United States

PEOPLE'S MOJAHEDIN ORGANIZATION OF IRAN,
PETITIONER

v.

DEPARTMENT OF STATE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the court of appeals applied the correct legal standard in reviewing the Secretary of State's designation of petitioner as a "foreign terrorist organization."

2. Whether the Secretary of State violated the Due Process Clause of the Fifth Amendment by designating petitioner as a "foreign terrorist organization" without giving petitioner prior notice and an opportunity to be heard.

3. Whether the designation of petitioner as a "foreign terrorist organization" resulted in a violation of the First Amendment rights of petitioner and/or its members and supporters.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-15a) is reported at 182 F.3d 17. The Department of State's Order of October 2, 1997, entitled Designation of Foreign Terrorist Organizations (Pet. App. 16a-22a), is reported at 62 Fed. Reg. 52,650.

JURISDICTION

The judgment of the court of appeals was entered on June 25, 1999. A petition for rehearing was denied on August 27, 1999 (Pet. App. 23a). The Chief Justice granted an extension of time to and including December 25, 1999, for filing a petition for a writ of certiorari, and the petition was filed on December 27, 1999 (a

Monday). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. This case involves the application of 8 U.S.C. 1189 (Supp. IV 1998), which was enacted by the Anti-terrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. No. 104-132, § 302(a), 110 Stat. 1248. Section 1189 reflects Congress's effort to "prevent persons within the United States, or subject to the jurisdiction of the United States, from providing material support or resources to foreign organizations that engage in terrorist activities." AEDPA § 301(b), 110 Stat. 1247 (statement of congressional purpose); see generally AEDPA § 301(a), 110 Stat. 1247 (congressional findings regarding the threat to the United States posed by terrorism and by financial contributions to terrorist organizations).

Under Section 1189, the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General (see 8 U.S.C. 1189(c)(4) (Supp. IV 1998)),

> is authorized to designate an organization as a foreign terrorist organization in accordance with this subsection if the Secretary finds that—
>
> (A) the organization is a foreign organization
>
> (B) the organization engages in terrorist activity (as defined in section 1182(a)(3)(B) of this title); and
>
> (C) the terrorist activity of the organization threatens the security of United States nationals or the national security of the United States.

8 U.S.C. 1189(a)(1) (Supp. IV 1998). The term "national security" is defined to mean "the national defense, foreign relations, or economic interests of the United States." 8 U.S.C. 1189(c)(2) (Supp. IV 1998). The designation of a "foreign terrorist organization" takes effect when it is published in the *Federal Register*. 8 U.S.C. 1189(a)(2)(A)(ii), 1189(a)(2)(B)(i) (Supp. IV 1998). Seven days before publishing such a notice, the Secretary must inform specified Members of Congress, by classified communication, of her intent to make the designation, as well as the factual basis for the required findings. 8 U.S.C. 1189(a)(2)(A)(i) (Supp. IV 1998).

Three consequences follow from the designation of an organization as a "foreign terrorist organization." First, if any financial institution becomes aware that it possesses or controls the funds of such an organization, the institution is required to retain the funds and notify the Secretary of the Treasury of their existence. 18 U.S.C. 2339B(a)(2) (Supp. IV 1998); see also 8 U.S.C. 1189(a)(2)(C) (Supp. IV 1998) (authorizing the Secretary of the Treasury to issue a blocking order at the time that Congress is notified of the impending designation). Second, alien representatives of the organization, as well as alien members who know or should have known that the organization is a foreign terrorist organization, may not be admitted to the United States. 8 U.S.C. 1182(a)(3)(B)(i)(IV) and (V) (Supp. IV 1998). Finally, any United States person who knowingly provides "material support or resources" to the organization will be guilty of a criminal offense. 18 U.S.C. 2339B(a)(1) (Supp. IV 1998).

In making a designation, the Secretary is required to create an administrative record. 8 U.S.C. 1189(a)(3)(A) (Supp. IV 1998). The Secretary may also consider classified information. 8 U.S.C. 1189(a)(3)(B) (Supp. IV

1998). An organization designated as a foreign terrorist organization may obtain judicial review of the Secretary's designation in the United States Court of Appeals for the District of Columbia Circuit. 8 U.S.C. 1189(b)(1) (Supp. IV 1998). The court's review is "based solely upon the administrative record, except that the Government may submit, for ex parte and in camera review, classified information used in making the designation." 8 U.S.C. 1189(b)(2) (Supp. IV 1998). The court of appeals "shall hold unlawful and set aside a designation" (8 U.S.C. 1189(b)(3) (Supp. IV 1998)) if the court finds it to be (*inter alia*) "lacking substantial support in the administrative record taken as a whole or in classified information submitted to the court." 8 U.S.C. 1189(b)(3)(D) (Supp. IV 1998).

2. In October 1997, the Secretary published a notice in the *Federal Register* designating 30 "foreign terrorist organizations" pursuant to Section 1189. Pet. App. 16a-22a. This case involves a petition for judicial review filed by petitioner People's Mojahedin Organization of Iran, also known as the Mujahedin-e Khalq (MEK), challenging the Secretary's designation of it as a foreign terrorist organization.[1]

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[1] Another organization designated in the October 1997 *Federal Register* notice, the Liberation Tigers of Tamil Eelam (LTTE), separately petitioned for review in the court of appeals. The court upheld both designations in a single opinion. Pet. App. 2a. The LTTE has not sought review of that judgment in this Court.

The original designation of petitioner expired by operation of law two years after it took effect. See 8 U.S.C. 1189(a)(4)(A) (Supp. IV 1998). On October 8, 1999, petitioner was redesignated as a "foreign terrorist organization" for an additional two-year period. 64 Fed. Reg. 55,111. Petitioner's challenge to that redesignation is currently pending before the court of appeals. See Pet. 7-8 n.2.

The facts underlying the Secretary's designation of petitioner are set forth in the unclassified Summary of Administrative Record (SAR) filed in the court of appeals, as well as in the court's opinion. Formed in Iran in the 1960s, petitioner's primary goal is the overthrow of the current Iranian government. Pet. App. 5a. Petitioner participated in and supported the takeover of the United States Embassy in Tehran in 1979 and was responsible for the killings of several United States nationals before the takeover. SAR 1-2, 17-19. In the 1970s, petitioner engaged in a campaign of bombings against targets that included the Tehran offices of American corporations. Pet. App. 5a-6a.

Since the revolution in Iran, petitioner "has developed into the largest and most active Iranian dissident group." SAR 1. In 1987, petitioner formed a military wing, the National Liberation Army of Iran (NLA), which is located in eastern Iraq. Pet. App. 6a. Petitioner receives substantial support and assistance, including military training, from the Iraqi regime of Saddam Hussein. SAR 1, 6. Among other terrorist actions, in April 1992 the organization coordinated simultaneous attacks on Iranian embassies and consulates in 13 cities around the world. SAR 15-16; Pet. App. 6a. In 1993, petitioner's members laid mines on Iranian roads and attacked an Iranian telecommunications office, killing two civilian workers. SAR 13. During the same year, petitioner's members shot and killed a Turkish diplomat in Iraq and wounded a Turkish embassy employee. SAR 11-12.

3. The court of appeals upheld the Secretary's designation of petitioner as a foreign terrorist organization. Pet. App. 1a-15a. The court first rejected the contention that Section 1189 violated petitioner's right to due process of law by authorizing the Secretary to

designate it as a foreign terrorist organization without giving petitioner notice or an opportunity to be heard. *Id.* at 9a-10a. The court explained:

> We put to one side situations in which an organization's bank deposits were seized as a result of the Secretary's designation. Neither the LTTE or the MEK suffered that fate, presumably because no United States financial institutions held any of their property. From all that appears, the LTTE and the MEK have no presence in the United States. Their status as foreign is uncontested. * * * A foreign entity without property or presence in this country has no constitutional rights, under the due process clause or otherwise.

Id. at 10a.

The court of appeals found no basis under the statute for setting aside the Secretary's designation of petitioner as a foreign terrorist organization. Of the three findings required under Section 1189(a)(1), the court held that the third finding—*i.e.*, that "the terrorist activity of the organization threatens the security of United States nationals or the national security of the United States," 8 U.S.C. 1189(a)(1)(C) (Supp. IV 1998) —is not subject to judicial review, because "it is beyond the judicial function for a court to review foreign policy decisions of the Executive Branch." Pet. App. 11a. The court stated that its review was appropriately limited to the first and second findings made by the Secretary, see *id.* at 11a-13a, and that "[j]udicial review, as thus limited, performs the role Congress intended without thrusting the judiciary into the political realm," *id.* at 13a. The court noted that petitioner did not contest the Secretary's finding that it was a "foreign organization" within the meaning of the statute. *Id.* at 14a. The court

of appeals found "substantial support" in the record for the Secretary's second required finding—*i.e.*, that petitioner engages in terrorist activities. *Id.* at 15a. It explained that "the Secretary had before her information that [petitioner] engaged in bombing and killing in order to further [its] political agenda[]." *Ibid.*[2]

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or of any other court of appeals. Further review is not warranted.

1. Petitioner contends (Pet. 9-12) that Section 1189, as construed by the court of appeals in this case, violates Article III by forcing the reviewing court to "rubber-stamp" a decision made by the Executive Branch. That claim is incorrect. The court of appeals explained that an organization designated by the Secretary pursuant to Section 1189 may "seek [the court's] judgment about whether the Secretary followed statutory procedures, or whether she made the requisite findings, or whether the record she assembled substantially supports her findings." Pet. App. 11a. The reviewing court in essence asks whether the designation is reasonable in light of the facts as the Secretary understood them—subject to the qualification that the court may not inquire into the reasonableness of the Secretary's finding that the organization's terrorist activity "threatens the security of United States

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[2] Petitioner raised other challenges to the Secretary's designation as well, including the claim (see Pet. C.A. Br. 20-21) that the designation deprived it of rights protected by the First Amendment. The court of appeals rejected those additional claims without discussion. See Pet. App. 15a.

nationals or the national security of the United States." *Ibid.* (quoting 8 U.S.C. 1189(a)(1)(C) (Supp. IV 1998)).

That judicial review under Section 1189 is circumscribed does not mean that the court of appeals in conducting such review has ceased to function as an Article III court. Executive Branch decisions concerning foreign affairs and the treatment of aliens have traditionally been reviewed under highly deferential standards. See, *e.g.*, *Mathews* v. *Diaz*, 426 U.S. 67, 82 (1976) (noting the "narrow standard of review of decisions made by the Congress or the President in the area of immigration and naturalization"); *Kleindienst* v. *Mandel*, 408 U.S. 753, 770 (1972) ("when the Executive exercises this power [of excluding aliens] negatively on the basis of a facially legitimate and bona fide reason, the courts will neither look behind the exercise of that discretion, nor test it by balancing its justification against the First Amendment interests of those who seek personal communication with the applicant"). Section 1189, as construed by the court of appeals, is fully in keeping with that tradition. The court of appeals' approach implements Congress's judgment that the Secretary's Section 1189 designations should be subject to some judicial scrutiny, while recognizing the primacy of the Executive Branch in matters involving foreign policy and the treatment of aliens.[3]

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[3] In *Humanitarian Law Project* v. *Reno*, Nos. 98-56062 & 98-56280, 2000 WL 235310, at *5 (9th Cir. Mar. 3, 2000), the court of appeals held that "AEDPA does not grant the Secretary unfettered discretion in designating" foreign terrorist organizations because the law establishes standards that are "sufficiently precise to satisfy constitutional concerns" and provides for judicial review of the Secretary's decision. *Ibid.* The court observed that "the degree of deference accorded to the Secretary's decision" in the

Nothing in this Court's precedents suggests that such a course is in any way inconsistent with the requirements of Article III.[4]

Petitioner also contends (Pet. 10) that the court of appeals' "decision casts off the basic requirements of Article III as outlined in cases discussing judicial review of search and arrest warrants." The cases cited by petitioner (Pet. 10-11) establish that a magistrate, before issuing a search or arrest warrant, must make an independent determination that the requisite probable cause exists. That duty is derived, however, not from the "requirements of Article III," but from the Fourth Amendment and the applicable Federal Rules of Criminal Procedure. See *Giordenello* v. *United States*, 357 U.S. 480, 485-486 (1958); *United States* v. *Ventresca*, 380 U.S. 102, 105-109 (1965).

2. Petitioner contends (Pet. 12-17) that the court of appeals erred by failing to apply the principles that govern "substantial evidence" review under the Administrative Procedure Act (APA). That claim is incorrect. In determining the mode of review appropriate under

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review proceedings "is a necessary concomitant of the foreign affairs power." *Ibid.*

[4] In other spheres as well, this Court has recognized that respect for coordinate Branches requires a narrow scope of judicial review. For example, "[i]n areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *FCC* v. *Beach Communications, Inc.*, 508 U.S. 307, 313 (1993). Under that standard, "a legislative choice is not subject to courtroom factfinding and may be based on rational speculation unsupported by evidence or empirical data." *Id.* at 315. No one would suppose that a court in applying that standard has ceased to function as an Article III tribunal.

Section 1189, the court of appeals correctly took account of the distinctive features of the statutory scheme, including the subject matter of the statute, the manner in which the administrative record is compiled, and the phrasing of the applicable standard of review.

a. As we explain above, Executive Branch determinations regarding foreign affairs and the treatment of aliens are typically reviewed by a court—when they are reviewed at all—under a highly deferential standard. The court of appeals correctly recognized that its approach to review under Section 1189 should take account of the fact that the Secretary's designation of foreign terrorist organizations implicates foreign policy concerns that are traditionally beyond the judicial ken. See Pet. App. 11a, 14a. Indeed, the petition for certiorari does not question the court of appeals' holding that *no* review was available of the Secretary's determination that petitioner's terrorist activity "threatens the security of United States nationals or the national security of the United States." *Id.* at 11a (quoting 8 U.S.C. 1189(a)(1)(C) (Supp. IV 1998)). Similar concerns underlay the court's holding that although it could undertake *some* review of the Secretary's determination that petitioner engages in "terrorist activity," it could not properly attempt to assess "the quality of the information" on which the Secretary relied. *Id.* at 15a.

b. The manner in which a Section 1189 "administrative record" is compiled also affects the nature of subsequent judicial review. In contrast to a typical rulemaking or agency adjudication, the administrative record in a Section 1189 proceeding necessarily is compiled by the government unilaterally, without direct input from the subject organization. 8 U.S.C. 1189(a)(2)

and (a)(3)(A) (Supp. IV 1998).[5] As the court of appeals explained, "nothing in the legislation restricts the Secretary from acting on the basis of third hand accounts, press stories, material on the Internet or other hearsay regarding the organization's activities." Pet. App. 3a. The Secretary may also consider classified information. 8 U.S.C. 1189(a)(3)(B) (Supp. IV 1998). The distinctive manner in which the administrative record is compiled further refutes petitioner's suggestion that APA principles can be mechanically applied to judicial review of the Secretary's designation.

c. The court of appeals' understanding of its role is also supported by the text of Section 1189's judicial review provision. As the court observed (Pet. App. 14a n.8), the applicable standard of review—*i.e.*, whether the Secretary's designation "lack[s] substantial *support* in the administrative record taken as a whole or in classified information submitted to the court," 8 U.S.C. 1189(b)(3)(D) (Supp. IV 1998) (emphasis added)—differs from the "substantial evidence" standard that is "a term of art in administrative law." The court noted

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[5] The SAR in this case describes admissions and claims of responsibility for terrorist attacks made by MEK officials, sometimes in the form of press statements or summaries/transcripts of MEK radio broadcasts. See, *e.g.*, SAR 2, 8, 9, 10, 11, 12, 13, 14, 15. To that extent the government relied on petitioner's self-description in determining that it is a "foreign terrorist organization." The statutory scheme clearly does not envision, however, that an organization will be given notice of a contemplated designation or any opportunity to participate formally in the process by which the designation is made. *Inter alia*, such notice would undermine the effective operation of 18 U.S.C. 2339B(a)(2) (Supp. IV 1998), which freezes funds in which a designated foreign terrorist organization holds an interest, by enabling the organization to remove the funds prior to the designation.

that the change in wording may have reflected Congress's awareness that the "substantial evidence" standard typically implies a requirement of "adversary, adjudicative-type procedures before the agency." Pet. App. 14a n.8 (internal quotation marks omitted). Congress's modification of the familiar term "substantial evidence" reinforces the conclusion that the Secretary, in designating foreign terrorist organizations, may appropriately rely on materials that would not be regarded as admissible evidence in a judicial proceeding. See *id.* at 3a (court of appeals observes that "[t]he information [contained in the SAR] is certainly not evidence of the sort that would normally be received in court"). The Secretary's flexibility to consider such materials would be substantially undermined if the court of appeals applied APA standards of evidentiary reliability in reviewing the Secretary's designation.

d. In the court of appeals, petitioner did not dispute that it employs violent means of obtaining its political objectives. Rather, the thrust of its argument was that its activities could not properly be treated as "terrorist" conduct because it was engaged in legitimate resistance to an illegitimate regime. Thus, petitioner stated that it "maintains an army (the National Liberation Army), and it carries out missions within Iran against military and strategic targets. But if armed resistance to an oppressive regime were illegal, the United States would not be a nation." Pet. C.A. Br. 27. Petitioner further contended that "[t]he statutory defect in respondents' designation of petitioner is the absence of any identified 'foreign relations' being 'threatened' by any of petitioner's activities." *Id.* at 28.

In deciding whether violent foreign organizations should be treated as terrorists, responsible officials in the political Branches must make nuanced assessments

of a variety of moral, practical, and political considerations. Those considerations are essentially irrelevant, however, to the statutory definition of "terrorist activity," which involves an objective inquiry into the presence or absence of specified violent acts. See 8 U.S.C. 1182(a)(3)(B)(ii). Those considerations *are* relevant, however, to the Secretary's ultimate determination whether an organization is a "foreign terrorist organization," because they may be taken into account in determining whether an organization's terrorist activity "threatens the security of United States nationals or the national security of the United States." 8 U.S.C. 1189(a)(1)(C) (Supp. IV 1998). But as we explain above, the court of appeals held that the Secretary's finding under Section 1189(a)(1)(C) is not judicially reviewable (see Pet. App. 11a), and petitioner has not challenged that holding in this Court.

3. Petitioner contends (Pet. 18-27) that its contacts with the United States are sufficient to entitle it to the protections of the Due Process Clause. That claim lacks merit.

a. The court of appeals rested its due process analysis on the proposition that "[a] foreign entity without property or presence in this country has no constitutional rights, under the due process clause or otherwise." Pet. App. 10a. That statement is correct and consistent with this Court's precedents. The Court's decisions recognizing constitutional protections for aliens "establish only that aliens receive constitutional protections when they have come within the territory of the United States and developed substantial connections with this country," *United States* v. *Verdugo-Urquidez*, 494 U.S. 259, 271 (1990); they do not suggest that an alien having no meaningful ties to the United States may invoke the Due Process Clause.

Contrary to petitioner's assertion (Pet. 19-20), the court of appeals' determination that petitioner lacks Fifth Amendment rights was not based "exclusively on [petitioner's] 'concession' that it is a foreign organization under the statute." Rather, the court considered all the information before it and concluded that "[f]rom all that appears, * * * petitioner ha[s] no presence in the United States." Pet. App. 10a. That understanding of petitioner's minimal connection to the United States is consistent with the statement in petitioner's court of appeals brief that the organization's "official presence in this country is limited to a small press office in the National Press Building here in Washington." Pet. C.A. Br. 5.[6] The court of appeals also inferred that "no United States financial institutions held any of [petitioner's] property," Pet. App. 10a, apparently from the fact that no assets of petitioner had been frozen (*ibid.*) pursuant to 8 U.S.C. 1189(a)(2)(C) (Supp. IV 1998) and/or 18 U.S.C. 2339B(a)(2) (Supp. IV 1998). Thus, based on the record and the arguments presented to it, the court of appeals correctly concluded that petitioner lacked the substantial connections with this country that would typically entitle an alien to invoke the protections of the Constitution.

There is, in particular, no basis for petitioner's contention that the court of appeals' decision "collides with case law from this Court recognizing that foreign organizations may rely on the Fifth Amendment of the

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[6] Petitioner's current arguments (Pet. 20-21) from the SAR regarding the extent of its contacts with the United States were not presented to the court of appeals, and this Court should not consider them in the first instance. Petitioner will have the opportunity to present those arguments in connection with its pending petition for review of the 1999 redesignation of petitioner as a foreign terrorist organization. See Pet. 7-8 n.2.

Constitution to challenge actions of the federal government that affect their interest in property located in this country." Pet. 22 (citing *Russian Volunteer Fleet* v. *United States*, 282 U.S. 481 (1931)). In *Russian Volunteer Fleet*, this Court held that a foreign organization whose property in the United States had been expropriated by the federal government could invoke the protections of the Just Compensation Clause of the Fifth Amendment. 282 U.S. at 489. The court of appeals in the instant case specifically reserved judgment on the question whether a designated foreign terrorist organization could assert a due process challenge to the freezing of its funds pursuant to the statute. See Pet. App. 10a ("We put to one side situations in which an organization's bank deposits were seized as a result of the Secretary's designation.").

b. As the court of appeals observed, "[n]o one would suppose that a foreign nation had a due process right to notice and a hearing before the Executive imposed an embargo on it for the purpose of coercing a change in policy." Pet. App. 10a (citing *Regan* v. *Wald*, 468 U.S. 222 (1984)). That would be so, of course, even if the foreign nation maintained an embassy, consulate, or other such presence in the United States. Although petitioner is not a recognized foreign government, it is a foreign entity that (by its own account) is dedicated to the violent overthrow of Iran's current government and conducts both "diplomatic" and "military" activities to achieve that result. See Pet. C.A. Br. 16 n.17, 19. It is headquartered in Iraq, has relations with the Iraqi government, and maintains its own "army." Pet. 19; Pet. C.A. Br. 18, 27, 34. Such an entity cannot plausibly claim an entitlement to due process protections that would limit the ability of Executive Branch officials to conduct United States foreign policy.

c. Even if petitioner could avail itself of constitutional protections, the Due Process Clause is not implicated in this case because the Secretary's designation did not deprive it of any constitutionally cognizable liberty or property interest. See, *e.g.*, *Ingraham* v. *Wright*, 430 U.S. 651, 672 (1977). As we explain above (p. 3, *supra*), designation of an organization pursuant to Section 1189 has three possible consequences: (i) the potential freezing of funds in which the organization has an interest; (ii) restrictions on the admission into the United States of the organization's alien members and representatives; and (iii) a criminal prohibition on the provision of material support to the organization by United States persons.

Petitioner did not suffer any deprivation of liberty or property as a result of the Secretary's designation. (i) Assuming, *arguendo*, that the freezing of assets would effect a deprivation of property, petitioner did not "suffer[] that fate." Pet. App. 10a; see pp. 14-15, *supra*. (ii) Any restriction on the admission of petitioner's alien members or representatives would not effect a deprivation of petitioner's liberty or property, both because the burden would fall on individuals rather than on the organization *qua* organization, and because "an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative." *Landon* v. *Plasencia*, 459 U.S. 21, 32 (1982). (iii) Petitioner has failed to identify any deprivation of a cognizable property interest caused by the statutory ban on the provision of material support and resources by United States persons. Moreover, cutting off contributions to petitioner does not deprive it of a cognizable property interest, both because petitioner has no

"legitimate claim of entitlement," *Board of Regents* v. *Roth*, 408 U.S. 564, 577 (1972), to receive financial support from third parties, and because international transactions are in any event always subject to the plenary power of the national government to regulate or prohibit them. See, *e.g.*, *Dames & Moore* v. *Regan*, 453 U.S. 654 (1981).

4. Petitioner suggests (Pet. 26-27) that designation of a foreign terrorist organization pursuant to Section 1189 infringes the First Amendment rights of the organization and/or its members and supporters. That claim lacks merit. As a foreign political organization with no substantial presence in this country, petitioner is "unable to claim the protections of the First Amendment." *DKT Memorial Fund Ltd.* v. *AID*, 887 F.2d 275, 284 (D.C. Cir. 1989). In any event, the First Amendment does not prevent Congress from prohibiting the transfer of material resources to foreign organizations found to be engaged in terrorist activity. As the Ninth Circuit recently explained,

> [AEDPA] does not prohibit being a member of one of the designated groups or vigorously promoting and supporting the political goals of the group. [Individuals] are even free to praise the groups for using terrorism as a means of achieving their ends. What AEDPA prohibits is the act of giving material support, and there is no constitutional right to facilitate terrorism by giving terrorists the weapons and explosives with which to carry out their grisly missions. Nor, of course, is there a right to provide resources with which terrorists can buy weapons and explosives.

Humanitarian Law Project v. *Reno*, Nos. 98-56062 & 98-56280, 2000 WL 235310, at *2 (Mar. 3, 2000).[7]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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[7] The court of appeals in the instant case stated that "[b]ecause the issue [wa]s not before [it], [it would] not decide whether § 1189 deprives those in the United States of some constitutional right if they are members of, or wish to donate money to, an organization designated by the Secretary." Pet. App. 10a n.6. For the reasons stated by the Ninth Circuit in *Humanitarian Law Project*, the statutory ban on donations of money to designated foreign terrorist organizations does not violate a would-be donor's First Amendment rights. Furthermore, federal law does not prohibit persons within the United States from becoming "members" of such an organization, so long as membership does not entail the provision of material support.